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No. F.8(12)-Law/Leg-I/2018(Part)/_____ Dated, Agartala, the 17th December, 2018

NOTIFICATION

The following Act of the Tripura Legislative Assembly received the assent of the Governor of Tripura on the 14th December, 2018 and is hereby published for General information.

D.M.Jamatia
L.R. & Secretary, Law
Government of Tripura

The Tripura Act No.11 of 2018.

THE TRIPURA ROAD DEVELOPMENT CESS ACT, 2018.

AN

ACT

to provide for levy and collection of Cess on Petrol, Diesel and Natural Gas in the State of Tripura for the purpose of creating fund in order to Road Development in the State and the matters connected therewith or incidental thereto.

BE it enacted by The Tripura Legislative Assembly in the Sixty-ninth Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement:

(1) This Act may be called the "Tripura Road Development Cess Act, 2018";

(2) It shall come into force on and from the 1st day of August, 2018.

2. Definitions:

(1) In this Act, unless the context otherwise requires, --

(a) "Cess" means the cess on the turnover of sales of Petrol, Diesel and Natural Gas levied under section 3;

(b) "Collector" means the Collector appointed under section 10 and includes a Special Collector or an Additional Collector appointed under that section;

(c) "Prescribed" means prescribed by rules;

(d) "Rules" means rules made under this Act;

(e) "Tax" means tax levied under The Tripura Value Added Tax Act, 2004 (Tripura Act No. 1 of 2004);

(f) "Tribunal" means The Tripura Value Added Tax Tribunal constituted under section 18 of The Tripura Value Added Tax Act, 2004 and discharging functions of the Tribunal assigned to it by or under this Act;

(g) "Turnover of sales" means sales price including the amount of tax as defined in clause (e) of this section;

(h) "Year" means a financial year.

(2) Words and expressions used and not defined in this Act but defined in the Tripura Value Added Tax Act, 2004 shall have the meanings respectively assigned to them in that Act.

CHAPTER II

LEVY OF CESS AND UTILISATION OF PROCEEDS OF CESS

3. Levy and collection of cess:

(1) There shall be levied and collected, for the purposes of this Act, a cess on the turnover of sales of Petrol, Diesel and Natural Gas from a manufacturer or importer or dealer, but after deducting therefrom such turnover on which cess has been paid on earlier turnover of sales of Petrol, Diesel and Natural Gas;

Provided that, such cess shall not be levied at more than one stage;

(2) The cess under sub-section (1) shall be levied for the prescribed period, in the prescribed manner and at such rate or rates not exceeding four per cent. of the turnover of sales of such Petrol, Diesel and Natural Gas, as may be prescribed;

(3) The cess levied under sub-section (1) shall be payable by the dealer.

4. Road Development Fund:

(1) The proceeds of the cess and interest (other than fines) recovered under this Act shall first be credited to the Consolidated Fund of the State and after deduction of the expenses of collection and recovery

therefrom shall, under appropriation duly made by law in this behalf, be entered in, and transferred to, a separate fund called the "Road Development Fund";

(2) Any amount transferred to the Road Development Fund under sub-section (1) shall be charged on the Consolidated Fund of the State;

(3) The amount transferred to the Road Development Fund shall be expended in such manner and subject to such conditions as may be prescribed for the purpose mentioned in section 3.

5. Payment of cess:

(1) The cess levied under section 3 shall be payable by dealer in such manner, as may be prescribed;

(2) The dealer liable to pay cess under section 3 shall furnish returns, at such intervals and to such authority, in such form and in such manner, as may be prescribed.

6. Interest on delayed payment of cess:

If a dealer fails to pay the amount of cess within the time prescribed for its payment, there shall be paid by such dealer, for the period commencing on the date of expiry of the aforesaid period and ending on the date of payment of the amount of cess, simple interest at the rate of eighteen percent per annum on the amount of cess not so paid or any less amount thereof remaining unpaid during such period.

7. Refund in certain circumstances:

Where cess under section 3 is levied and collected on the turnover of sales of Petrol, Diesel and Natural Gas to a dealer and such Petrol, Diesel and Natural Gas is then sold by such dealer in the course of inter-State trade or commerce or exported out of the territory of India within six months of such sales, the dealer shall, upon an application made in this behalf and subject to such conditions as may be prescribed, be entitled to refund of cess in respect of the sale to him of the Petrol, Diesel and Natural Gas.

CHAPTER III

REGISTRATION

8. Registration:

(1) Every dealer registered under the Tripura Value Added Tax Act, 2004 shall be required to apply for a registration certificate, in such form, within such period and to such authority, as may be prescribed;

(2) On receipt of the application for registration under sub-section (1), the authority so prescribed, on its satisfaction, may issue certificate of registration in such form, as may be prescribed;

Provided that the State Government or any other Authority authorised by the Government by Notification may, subject to the condition, as may be prescribed, grant exemption from the provisions of registration to a dealer who, by virtue of deduction from turnover of sales, does not become liable to pay cess under this Act.

9. Suspension or cancellation of registration:

The Registering Authority may, subject to such conditions as may be prescribed, suspend or cancel the registration; if -

(a) any cess payable under section 5 is not duly paid by the dealer; or

(b) there is any breach of conditions subject to which the registration is granted; or

(c) the dealer contravenes any of the provisions of this Act or the rules made thereunder.

CHAPTER IV

CESS AUTHORITIES

10. Cess Authorities:

(1) For carrying out the purposes of this Act, the State Government may by Notification appoint - (a) a person to be the Collector of Tripura Road Development Cess for the whole of the State of Tripura;

(b) a person to be the Special Collector of Tripura Road Development Cess;

(c) a person to be the Additional Collector of Tripura Road Development Cess; and

(d) such other persons to assist the Collector as the State Government may think fit;

(2) The persons appointed under clause (b), (c) or (d) of sub-section (1) shall, within the limits of such area as the State Government may specify, in the Notification, exercise such powers and perform such duties, as may be conferred or imposed on-him by or under this Act.

CHAPTER V

LIABILITY TO KEEP ACCOUNTS, SUBMIT STATEMENT AND POWERS OF INSPECTION AND SEARCH.

11. Dealers to keep accounts and submit statement:

Every dealer shall keep and maintain accounts, of Petrol, Diesel and Natural Gas manufactured, imported, sold or purchased by him, in such Form, as may be prescribed and shall submit to the officer authorized in this behalf, in such manner and for such period, as may be prescribed;

Provided that where a dealer has more than one place of business, the Collector may subject to such terms and conditions, as may be prescribed, permit such dealer to submit a consolidated statement relating to all or any of his places of business to such officer as the Collector may direct.

12. Production and inspection of accounts and documents and search of premises:

(1) The Collector may, for the purposes of this Act, at all reasonable times,-

(i) require any dealer to produce before him the accounts, register or other documents or to furnish any other information; or

(ii) inspect the accounts, registers and other documents and the stocks of Petrol, Diesel and Natural Gas manufactured, stored or kept in any shop, warehouse or place of business of any such dealer; or

(iii) at all reasonable times, enter into and search any building, vessel, vehicle or place, in which he has reason to believe that Petrol, Diesel and Natural Gas is stored or kept for the purpose of sale or manufacture or where the accounts, registers and other documents are kept;

(2) All searches made under this section shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973.

13. Seizure of any documents in certain circumstances:

If the Collector has reason to believe that any dealer is attempting to commit an offence punishable under this Act, he may for reasons to be recorded in writing, seize such accounts, registers or other documents of such dealer as may be necessary and shall grant a receipt for the same and retain the same for such period, as may be necessary for examination thereof or for prosecution.

CHAPTER VI

ASSESSMENTS, APPEALS AND REVISION

14. Assessment:

(1) The amount of cess due from a dealer shall be assessed by the Collector;

(2) If the Collector is satisfied that the returns furnished by a dealer are correct and complete, he shall assess the amount of cess due from the dealer on the basis of such returns;

(3) If the Collector is not satisfied that the returns furnished in respect of any period are correct and complete, and he thinks it necessary to require the production of further evidence; he shall serve on such dealer, in the prescribed manner, a notice requiring him on a date and a place specified therein, either to attend and produce or cause to be produced all evidence on, which such dealer relies in support of his returns, or to produce such evidence as is specified in the notice. On the date specified in the notice, or as soon as may be thereafter, the Collector shall, after considering all the evidences which may be produced, assess the amount of cess due from the dealer;

(4) If a dealer fails to comply with the terms of any notice issued under sub-section (3), the Collector shall assess, to the best of his judgement, the amount of cess due from him.

15. Bar of certain proceedings:

(1) Save as provided under section 19, no assessment made and no order passed under this Act or the rules made thereunder, by the Collector or any person appointed under section 10, shall be called in question in any civil court;

(2) Save as provided under sections 16 and 17, no appeal or application for revision shall lie against any such assessment or order.

16. Appeal:

(1) Any dealer aggrieved by any order of the Collector, may file an appeal before such authority, within such time and in such manner, as may be prescribed;

(2) No appeal against an order or the assessment shall be entertained by the said authority unless it is accompanied by satisfactory proof of the payment of the cess with interest, if any, in respect of which the appeal has been preferred;

Provided that the said authority may, if it thinks fit, for reasons to be recorded in writing, entertain an appeal against such order,-

(a) Without payment of the cess or interest, if any, but on furnishing in the prescribed manner, security for such amount of cess and interest, as it may direct; or

(b) On proof of payment of such smaller sum, with or without security in like manner for such amount of cess and interest which remains unpaid as it may direct;

(3) Subject to such rules of procedure as may be prescribed, the said authority may pass such order on appeal as it may think just and proper;

(4) Every order passed in appeal under this section shall, subject to the provisions of sections 17, 19 and 20 be final.

17. Revision:

(1) Subject to such rules as may be prescribed, and for the reasons to be recorded in writing, the Collector may, upon application or on his own motion, review or revise any order passed under this Act or the rules made thereunder, by a person appointed under section 10 and subject thereto the Tribunal may, upon application, revise an order passed by the Collector;

Provided that no application under this sub-section shall be entertained if it is not made within a period of four months from the date of the order;

Provided further that before rejecting any application for the revision of any such order, the Collector or the Tribunal, as the case may be, shall record in writing the reason for such rejection;

(2) Before any order is passed under this section, which is likely to affect any person adversely, such person shall be given a reasonable opportunity of being heard;

(3) Where an appeal lies under section 16 and no appeal has been filed, no proceedings in revision under this section shall be entertained upon the application of such person.

18. Extension of period of limitation in certain cases:

The prescribed authority may admit any appeal under section 16 and the Collector and the Tribunal may admit an application under section 17 after the expiry of period of limitation laid down in the said sections, if the appellant or the applicant, as the case may be, satisfies the prescribed authority, the Collector or, as the case may be, the Tribunal, that he had sufficient causes for not preferring the appeal, or making the application, within such period.

19. Statement of case to High Court:

(1) Within ninety days from the date of passing of any order under sub-section (3) of section 16 or sub-section (1) of section 17 affecting any liability of any dealer to pay cess, such dealer or the Collector, may by application in writing require the Tribunal to refer to the High Court any question of law arising out of such order, and where the Tribunal agrees it shall draw up a statement of the case and refer it to the High Court;

(2) If, for reasons to be recorded in writing, the Tribunal refuses to make such reference, the applicant may within thirty days of such refusal apply to the High Court against such refusal;

(3) If upon the receipt of an application under sub-section (2), the High Court is satisfied that such refusal was not justified, it may require the Tribunal to state a case and refer it to the High Court; and on receipt of such requisition, the Tribunal shall state and refer the case to the High Court accordingly;

(4) If the High Court is satisfied that the statements in a case referred to it under this section, are not sufficient to determine the question raised thereby, it may refer the case back to the Tribunal to make such additions thereto or alternations therein as the High Court may direct in that behalf;

(5) The High Court upon the hearing of any such case shall decide the question of law raised thereby, and shall deliver its judgement thereon containing the grounds on which such decision is founded, and shall send to the Tribunal a copy of such judgement under the seal of the High Court and the signature of the Registrar General or any other Officer authorised in this behalf, and the Tribunal shall dispose of the case accordingly;

(6) The payment of the amount, if any, of the cess due in accordance with the order of the Tribunal in respect of which an application has been made under sub-section (1) shall not be stayed pending the disposal of such application or any reference made in consequence thereof, but if such amount is reduced as the result of such reference, the excess cess paid shall be refunded.

20. Rectification of mistakes:

(1) The Collector may at any time within two years from the date of any order passed by him, either on his own motion or on an application made by any person affected by such order, rectify any mistake of fact apparent from the record;

Provided that no such rectification shall be made if it has the effect of enhancing the cess or reducing the amount of a refund, unless the Collector has given notice in writing to such dealer of his intention to do so, and has allowed such dealer a reasonable opportunity of being heard;

(2) The provisions of sub-section (1) shall apply to the rectification of mistake by the Tribunal or the prescribed authority under section 16 as they apply to the rectification of a mistake by the Collector;

(3) Where any such rectification has the effect of reducing the amount of cess, the Collector shall in the prescribed manner refund any due, to such dealer;

(4) Where any such rectification has the effect of enhancing the amount of cess or reducing the amount of refund, the Collector shall recover the amount due from such dealer in the manner provided in section 32.

CHAPTER VII

OFFENCES, PENALTIES AND PROCEDURE

21. Penalty for carrying on the business without registration:

Whoever contravenes the provisions of section 8 shall, on conviction, be punished with fine which may extend to Twenty thousand Rupees and in the case of a continuing contravention, with an additional fine which may extend to the One thousand Rupees for each day during which such contravention continues after conviction for the first such contravention.

22. Penalty for failure to keep accounts or submit reports:

If any dealer, who is liable to keep accounts or submit statements under section 11, fails without sufficient cause to keep or submit the same in the manner and within the period prescribed or keeps false accounts or submits false statements, he shall, on conviction, be punished with fine which may extend to Twenty thousand Rupees and in the case of a continuing failure, with an additional fine which may extend to One thousand Rupees for each day during which such failure continues, after conviction for the first such failure.

23. Penalty for failure to comply with requirements of section 12 or obstructing officer in discharge of duties:

Whoever -

(a) Fails to comply with any requirement, made to him under sub-section (1) of section 12, or

(b) Produces false accounts, registers or documents, or knowingly furnishes false information, or

(c) Obstructs any officer making an inspection, search or seizure under the provisions of this Act, or

(d) Aids or abets any person in the commission of any act, specified in clause (a), (b) or (c) of this section,

shall, on conviction, be punished with fine which may extend to Twenty thousand Rupees and in the case of a continuing contravention, with an additional fine which may extend to One thousand Rupees for each day during which such contravention continues after conviction for the first such contravention.

24. Offences by companies:

(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed beyond his knowledge or that he had exercised all due diligence to prevent the commission of such offence;

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.- "For the purpose of this section

(a) "Company" means a body corporate, and includes a firm or other association of individuals; and

(b) "Director" in relation to a firm means a partner in the firm.

25. Cognizance of offences:

No court shall take cognizance of any offence punishable under this Act except with the previous sanction of the Collector.

26. Power of entry and search:

(1) Any officer specifically empowered by the State Government in this behalf may enter and search, at any reasonable time any building, vessel, vehicle or place in which he has reason to believe that Petrol, Diesel and Natural Gas is kept for the purpose of sale, contrary to the provisions of this Act or any rules made thereunder;

(2) All searches made under this section shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973.

27. Powers of investigation:

(1) Every officer not below such rank as may be prescribed shall, within the area for which he is appointed, have power to investigate all offences punishable under this Act;

(2) Every such officer shall, in the conduct of such investigation, exercise the powers conferred by the Code of Criminal Procedure, 1973 upon an officer in-charge of police station for the investigation of a cognizable offence.

CHAPTER VIII

MISCELLANEOUS

28. Delegation of Powers:

Subject to the general or special orders of the State Government, the Collector may delegate any of the powers conferred upon him by or under this Act to any person appointed to assist him under section 10.

29. Powers to transfer proceedings:

The Collector may, after prior notice to the dealer, transfer any proceedings or class of proceedings under any provisions of this Act or the rules made thereunder, from himself to any other officer and he may likewise transfer any such proceedings (including proceeding already transferred

under this section) from one such officer to another officer or to himself, by an order in writing.

30. Officers to be public servants:

The Collector, all officers and other employees appointed under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (XLV of 1860).

31. Protection of action taken in good faith:

No suit, prosecution or other legal proceedings shall lie against any officer or employee appointed under this Act for anything, done or intended to be done in good faith in accordance of the provisions of this Act or the rules made thereunder.

32. Recovery as arrears of land revenues:

All sums payable as cess or interests (other than fines) under this Act shall, if not paid within the prescribed period or as the case may be, before such date as the Collector may direct, be recoverable as an arrears of land revenue.

33. Certain sales not liable to cess:

Nothing in this Act or the rules made thereunder, shall be deemed to impose or authorize the imposition of a cess on any turnover of sales of Petrol, Diesel and Natural Gas where such sales takes place –

(a) Outside the State of Tripura, or

(b) In the course of the import of such Petrol, Diesel and Natural Gas into the territory of India or the export of the goods out of such territory or

(c) In the course of inter-State trade or commerce.

Explanation- For the purpose of this section, whether a sale takes place-

(i) Outside the State of Tripura, or

(ii) In the course of import of the goods into the territory of India or the export of the goods out of such territory, or

(iii) In the course of inter-State trade or commerce,

shall be determined in accordance with the principle specified in sections 3, 4 and 5 of the Central Sales Tax Act, 1956.

34. Power to make rules:

(1) The State Government may, by notification in the Tripura Gazette, make rules for carrying out the purposes of this Act;

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) The stage at which, the rate at which and the manner in which, the cess shall be levied and collected under section 3;

(b) The manner in which and conditions subject to which the Road Development Fund shall be expended under section 4;

(c) The manner in which the cess shall be payable by dealer under sub-section (1) of section 5;

(d) The intervals at which, the authority to which, the form in which and the manner in which the return shall be furnished under sub-section 2 of section 5;

(e) The conditions subject to which a dealer shall be entitled to refund of cess under section 7;

(f) The conditions subject to which the exemption from the provisions of registration may be granted by the Collector under sub-section (1) of section 8;

(h) The form in which certificate of registration shall be issued under sub-section (3) of section 8;

(i) The conditions subject to which the Collector may suspend or cancelled registration under section 9;

(j) The form in which accounts shall be maintained by the dealer under section 11;

(k) The form in which, the manner in which and the period for which statements shall be submitted under section 11;

(l) Terms and conditions subject to which the dealer may be permitted to submit a consolidated statement under the proviso to section 11;

(m) The manner in which a notice shall be served by the Collector on a dealer under sub-section (3) of section 14;

(n) The manner in which, a time within which and the authority to which an appeal may be preferred under sub-section (1) of section 16;

(o) The manner in which the security shall be furnished under the proviso to sub-section (2) of section 16;

(p) The rules of procedure subject to which the authority may pass an order on appeal under sub-section (3) of section 16;

(q) The rules subject to which the Collector or the Tribunal may revise an order under sub-section (1) of section 17;

(r) The manner in which the Collector may refund the amount of cess under sub-section (3) of section 20;

(s) The rank of officer who shall have power to investigate offences under sub-section (1) of section 27;

(3) Any rule made under this section may provide that any person contravening any such rule shall be liable, on conviction, to be punished with a fine which may extend to One thousand Rupees and in the case of a continuing contravention with an additional fine which may extend to Fifty Rupees for each day during which such contravention continues after conviction for the first such contravention;

(4) The power to make rules conferred by this section shall be subject to the condition of the rules being made after previous publication;

Provided that, if the State Government is satisfied that circumstances exist which render if necessary to take immediate action, it may dispense with the previous publication of any rule to be made under this section;

(5) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as they are made and shall be subject to rescission by the State Legislature or to such modification as the State Legislature may make during the session in which they are so laid or the session immediately following;

(6) Any rescission or modification so made by the State Legislature shall be published in the Tripura Gazette, and shall thereupon take effect.

35.Removal of difficulties:

(1) If any difficulty arises in giving effect to any provisions of this Act, the Government may, by a general or a special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before the State Legislature.

36.Repeal and Savings:

(1) The Tripura Road Development Cess Ordinance, 2018 (The Tripura Ordinance No. 2 of 2018), which was promulgated on 1st August, 2018, is hereby repelled;

(2) Notwithstanding such repeal, any Notification and Order issued or any action taken under the Ordinance, so repealed shall be deemed to have been issued or likes under the corresponding provisions of this Act.

D.M. JAMATIA
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GOVERNMENT OF TRIPURA